

S.B. CIVIL WRIT PETITION NO.89/2005

Murari Lal Sidana & anr.

VS.

A.D.J. No.2, Sri Ganganagar & anr.

Date : 18.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. G.R. Goyal, for the petitioners.

- - - - -

Heard learned counsel for the petitioners.

According to learned counsel for the petitioners, the marriage of the petitioners' son Rajesh with non-petitioner no.2 Anita took place on 10.10.1997. The non-petitioner no.2 left the house of Rajesh leaving behind her two children with Rajesh. It is alleged that the petitioners' son Rajesh committed suicide on 8.10.2003. The non-petitioner no.2 submitted an application under Guardian and Wards Act for custody of children on 18.3.2004. In these proceedings, the non-petitioner no.2 submitted an application for interim custody but that was withdrawn unconditionally on 2.12.2004 by the non-petitioner no.2. However, the non-petitioner no.2 again submitted an application before the trial court in the same proceedings and sought Court's order so that the non-petitioner no.2 may meet her children vide order dated 17.12.2004.

According to learned counsel for the petitioners, the non-petitioner no.2 wants to abuse the process of

the Court and with an intention to grab the property of the petitioners and their son, she has moved this application. It is also submitted that when the non-petitioner no.2 herself has withdrawn the earlier application for interim custody unconditionally, then he cannot be permitted to have second round of litigation for seeking the same relief which she waived.

I have considered the submissions of learned counsel for the petitioners and perused the order dated 17.12.2004.

It is mentioned in the impugned order dated 17.12.2004 that the trial court itself observed that the trial court orally directed the petitioners to make available the children to the non-petitioner no.2 so that she could meet them.

Learned counsel for the petitioners submits that it is true that the Court orally directed the petitioners to keep the children available for meeting with the non-petitioner no.2 as stated in the impugned order dated 17.12.2004 but the trial court wrongly recorded that for that, the petitioners gave their consent.

Since it is admitted case that the trial court dismissed the application of the non-petitioner no.2 after giving directions to the petitioners, on the

basis of their consent, to make available the children for meeting with the non-petitioner no.2, therefore, the petitioners cannot have any grievance. However, if the trial court has mentioned wrong fact about the consent of the petitioners, then the petitioners should have raised objection before the trial court itself.

It is settled law that the fact mentioned in the court proceedings cannot be agitated before the appellate court or revisional court. It is also settled law that if the aggrieved party wants to dispute the fact mentioned in the order-sheet, then he should first approach the same Court and without doing so, he cannot challenge the fact recorded in the order.

There is no merit in the writ petition and the same is hereby dismissed.

However, the trial court is requested to decide the matter expeditiously as early as possible, in accordance with law.

(PRAKASH TATIA), J.

S.Phophaliya